

**STATE OF MICHIGAN
BEFORE THE MICHIGAN JUDICIAL TENURE COMMISSION**

COMPLAINT AGAINST:

Hon. Benjamin H. Logan
61st District Court

Formal Complaint No. 85

ANSWER

NOW COMES the Honorable Benjamin H. Logan, respondent, by and through his attorneys, the law firm of Dickinson Wright PLLC, and in answer to the complaint filed in this case by the Michigan Judicial Tenure Commission (JTC) says as follows:

1. The allegations of Paragraph 1 are admitted. Judge Logan is, and at all times pertinent hereto has been, the Chief Judge of the 61st District Court, recommended to the Supreme Court for that position by the other Judges of the 61st District Court and appointed to that position by the Supreme Court.

2. The allegations of Paragraph 2 are admitted.

COUNT I

3. In light of the jury verdict against Mr. Vaughn, Judge Logan accepts as true the allegations made in Paragraph 3, but does not have any personal knowledge of their truth.

4. Assuming that the phrase "arrested...on a probable cause charge" means arrested without a warrant, but based upon probable cause to believe that a crime has been committed by the person arrested, Judge Logan accepts, based upon the police report which he has read, news reports, and testimony at the trial which resulted in a verdict against Mr. Vaughn, that the

allegations of Paragraph 4 are true. Judge Logan has no personal knowledge, however, of the truth of those allegations.

5. Based upon news reports which he has no reason to doubt, Judge Logan also accepts as true the allegations of Paragraph 5, although, again, he has no personal knowledge of the truth of those allegations.

6. Judge Logan admits that he and Mr. Vaughn are “public office holders in Kent County,” more specifically, that he holds an elected position with the City of Grand Rapids, which is in Kent County, and that Mr. Vaughn holds an elected position with Kent County, as did Mr. Mayhue until his defeat in 2008 for re-election. Judge Logan neither admits nor denies, however, that either he or Mr. Vaughn are “prominent” officials. That characterization represents an assessment by others about which only they can accurately testify.

7. The allegations of Paragraph 7 are admitted to the extent they assert that Judge Logan and Mr. Mayhue exchanged telephone calls on June 17, 2008. The specific times of those phone calls are neither admitted nor denied, however; Judge Logan does not have any records showing those times. If the times alleged in Paragraph 7 are accurate, it is obvious that most of the calls occurred while Mr. Vaughn was incarcerated. The allegations of Paragraph 7 are denied to the extent that they suggest that Judge Logan and Mr. Mayhue actually talked with each other on June 17, 2008. The calls between them were an example of what is commonly called “phone tag.” Judge Logan and Mr. Mayhue called each other, got no response, left voicemail messages, responded to the messages, got no answer, etc. Judge Logan did not actually speak with Mr. Mayhue until after June 17, 2008.

8. Judge Logan admits that he was not the judge of the 61st District Court assigned to conduct arraignments in that Court on June 17, 2008. There is no court rule, policy, or

practice, however, which limits the conducting of arraignments and the setting of bonds on any given day to only the judge assigned that task for that day. It is not uncommon for another judge of the 61st District Court, most commonly at the request of the Grand Rapids Police Department (GRPD), to arraign an individual and/or to set bond for an individual who has been arrested.

9. Judge Logan admits that, in the early afternoon of June 17, 2008, he did direct his staff to obtain a copy of the police report of Mr. Vaughn's arrest and the incident which precipitated that arrest. His staff did obtain a copy for him. Judge Logan accepts the allegation of Paragraph 9 that the report was obtained from the GRPD computer system, but he has no personal knowledge of how the report was obtained. The 61st District Court has access to that part of the GRPD computer system which contains incident reports.

10. The allegations of Paragraph 10 are admitted to the extent they assert that Judge Logan set a bond for Mr. Vaughn which authorized his release from custody upon his agreeing to its terms and conditions, which is different than authorizing his release. The bond set by Judge Logan, which was a personal recognizance bond, did more than simply set an amount of \$5,000. That bond also imposed conditions for Mr. Vaughn's release, including that he have no contact with the complainant and his co-defendant. Judge Logan further admits that he directed that the Kent County Sheriff's Department (KCSD) be informed of the bond which he had set for Mr. Vaughn. That is standard procedure. He accepts that his staff did as directed and faxed or otherwise communicated the bond to the KCSD. Judge Logan neither admits nor denies that the communication by this staff with the KCSD occurred at approximately 2:30 p.m. on June 17, 2008. He has no personal recollection of the time he directed his staff to communicate with the KCSD, and he has no records which reflect the time of that communication.

11. Judge Logan admits that Mr. Vaughn was released from the Kent County Jail during the afternoon of June 17, 2008, but he has no personal knowledge about the time when that release occurred, nor does he know whether Mr. Vaughn was, at the time of his release, scheduled for an arraignment the following morning on June 18, 2008. Judge Logan notes that the GRPD told *The Grand Rapids Press* that, at about the time he set bond for Mr. Vaughn, it had decided to release him without charges, pending further investigation, and learned of Mr. Vaughn's release on bond when it called the KCSD to authorize his without charges and without a bond.

12. Judge Logan admits that he set bond for Mr. Vaughn based exclusively on the police report which had been obtained for him by his staff. After obtaining that report, he did not contact, or cause to be contacted, anyone at the GRPD for any additional information. Other than talking with the arresting officer, which would be unusual, Judge Logan knows of no other information which would have been available from the GRPD. .

13. Judge Logan admits that he did not inform the GRPD about the bond he had set for Mr. Vaughn. Except when the GRPD itself has contacted a judge of the 61st District Court asking for an unusual bond, in either amount or conditions, it is not the practice of the judges of the 61st Court to report bonds to the GRPD. That information is available to the GRPD on a Kent County-maintained website, known as "Jailview," to which the GRPD, as well as the other courts and police agencies in Kent County, have access. The GRPD learned of the bond set for Mr. Vaughn when it called the KCSD to release Mr. Vaughn as aforesaid.

14. The allegations of Paragraph 14 are admitted. As noted above, Mr. Vaughn was released from the Kent County Jail on June 17, 2008, without any charges lodged against him. He was eventually charged in July, 2008, and was convicted by a jury several months later.

15. The allegations of Paragraph 15 are denied. Setting bond for Mr. Vaughn under the circumstances alleged by the JTC did not violate any tenet of the Michigan Code of Judicial Conduct or any other provision of any court rule or statute.

COUNT II

16. The allegations of Paragraph 16 are admitted.

17. The allegations of Paragraph 17 are admitted.

18. The allegations of Paragraph 18 are denied. In his written communications with the JTC, Judge Logan never denied making phone calls to, or having had any telephone contact with, Mr. Mayhue on June 17, 2008. Judge Logan denied having had any “conversations” with Mr. Mayhue that day, which is true. “Phone tag” can represent multiple phone calls or contacts, but no conversation because no contact was achieved. Nor were the other denials in Judge Logan’s communications with the JTC untrue. Specifically, Judge Logan did not send Mr. Mayhue to the Kent County Jail to meet with Mr. Vaughn. The JTC’s own information, specifically, that Judge Logan’s first phone call to Mr. Mayhue, which came after an unanswered call to him from Mr. Mayhue, was at approximately 1:41 p.m., establishes the error of its contrary allegation because that telephone contact occurred after Mr. Mayhue had already arrived at the Kent County Jail, begun his visit with Mr. Vaughn and, in all likelihood, finished that visit, which means that Judge Logan could not have sent Mr. Mayhue to be an intermediary.

19. The allegations of Paragraph 19 are denied. Truthful responses to inquiries by the JTC are, by definition, not violations of any tenet of the Michigan Code of Judicial Conduct, or other law, but are what are required by that Code, court rules, and statute.

WHEREFORE, the Honorable Benjamin H. Logan, respondent, respectfully prays that the Complaint lodged against him by the JTC be dismissed with prejudice.

AFFIRMATIVE DEFENSES

By way of affirmative defense to the allegations made by the JTC in its Complaint, the Honorable Benjamin H. Logan asserts as follows:

1. Even if true in all respects, which they are not, the allegations in Count I do not establish any misconduct by Judge Logan. The JTC alleges only that, on June 17, 2008, Judge Logan set a bond when he was not the judge assigned that date to handle arraignments in the 61st District Court, did not review information other than a police report, and did not report to the GRPD his decision. Because no Michigan law or rule mandates that bonds be set in a multi-judge court only by the judge of that court assigned at a particular moment to conduct arraignments, that bonds be based on any information other than what is contained in an available police report, and that the arresting police department be notified of any bond decision, the JTC's allegations in Count I do not state a claim of judicial misconduct. In Paragraph 19(g), the JTC alleges that Judge Logan "allow[ed] family, social or other relationships to influence" his setting of a bond for Mr. Vaughn, which could be a violation of applicable standards, but the Complaint states no facts in support of its conclusory assertion, which is untrue.

2. In light of the specific circumstances of this particular case, the continued pursuit by the JTC of its complaint against Judge Logan will violate the guarantees of Due Process found in the Constitutions of the United States and the State of Michigan. According to its letters to Judge Logan, it appears that the JTC itself, not some third party, initiated the investigation which has resulted in the Complaint. In other words, the JTC itself did what is the equivalent of request an investigation; investigated its own request; found its own request to have merit; filed a formal complaint based on its investigation; will argue in support of its complaint; and, then, will sit in judgment of the merits of its complaint. Until its investigatory, charging and

adjudicatory functions are separated, the JTC cannot proceed because doing so will violate the Constitutions of the United States and the State of Michigan.

WHEREFORE, the Honorable Benjamin H. Logan, respondent, respectfully prays that the Complaint filed against him by the JTC be dismissed forthwith.

Respectfully submitted,

DICKINSON WRIGHT PLLC

By: Dennis C. Kolenda w/ permission
Dennis C. Kolenda (P16129)

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Scott L. Pelley
(P70757)

Dated: September 8, 2009

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PROOF OF SERVICE

STATE OF MICHIGAN)
)ss
COUNTY OF WAYNE)

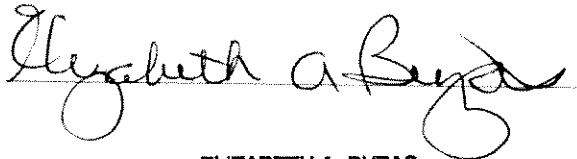
Faye A. Rosen, being first duly sworn, deposes and says that she is employed by Dickinson Wright PLLC, and that on September 8, 2009, she served an original and nine copies of Judge Benjamin Logan's *Answer* to formal complaint and this *Proof of Service*, upon Paul J. Fischer on behalf of the Michigan Judicial Tenure Commission by hand delivery (via courier) at the following address:

Michigan Judicial Tenure Commission
Suite 8-450
3034 West Grand Boulevard
Detroit, MI 48202



Faye A. Rosen

Subscribed and sworn to before me
this 8th day of September, 2009.



ELIZABETH A. BUZAS
Notary Public, Wayne County, Michigan
Acting in Wayne County
My Commission Expires 01/15/2012